

appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in 48 CFR 33.104(a)(3)(iv). The Senior Procurement Executive (for protests at the Headquarters level or those specific HCA protests cited in paragraph (i) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

[74 FR 36367, July 22, 2009, as amended at 75 FR 29459, May 26, 2010]

933.104 Protests to GAO.

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the Government Accountability Office (GAO) of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the HCA in accordance with 48 CFR 33.104(b). Before the HCA authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Senior Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the HCA authorizes performance, the finding required by 48 CFR 33.104(c)(2) shall

be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Senior Procurement Executive.

(g) *Notice to GAO.* (1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at 48 CFR 33.104(f), shall be provided by the HCA making the award, after approval of the Senior Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Senior Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests. 933.106 Solicitation provisions.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36367, 36378, July 22, 2009; 75 FR 29459, May 26, 2010]

933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at 48 CFR 52.233–2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 952.233–2.

(b) The contracting officer shall include the provision at 952.233–4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 952.233–5 in solicitations for purchases above the simplified acquisition threshold.

[61 FR 41708, Aug. 9, 1996, as amended at 74 FR 36367, July 22, 2009; 75 FR 29459, May 26, 2010]